

GOVERNMENT

No.12-1999-ND-CP

SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

Hanoi, 6 March 1999

**DECREE
ON
PENALTIES FOR ADMINISTRATIVE OFFENCES
IN RELATION TO INDUSTRIAL PROPERTY**

The Government

Pursuant to the *Law on the Organization of the Government* dated 30 September 1992;

Pursuant to the *Civil Code* dated 28 October 1995;

Pursuant to the *Ordinance on Dealing with Administrative Offences* dated 6 July 1995;

In order to improve the effect of protection of industrial property rights of organizations and individuals, to protect the rights and legitimate interests of consumers and to take part in fighting against production or trading of fake goods and commercial fraud;

On the proposal of the Minister of Science, Technology and Environment,

Decrees:

CHAPTER I

General Provisions

Article 1 *Definition of Terms*

In this Decree, the following terms shall have the meanings ascribed to them hereunder:

1. "*Object of industrial property*" means an invention, utility solution, industrial design, trademark (including trademark of services) or appellation of origin of goods.
2. "*Owner of industrial property*" means the owner of a certificate of protection, the owner of [a certificate] of international registration of a trademark, or a transferee of industrial property rights in respect to a protected object of industrial property.
3. "*Certificate of protection*" means the patent of an exclusive invention, utility solution or industrial design or the certificate of registration of the trademark or the certificate of the right to use an appellation of origin of goods.
4. "*Element which is in breach*" means:

- The identical or similar sign causing confusion with the protected trademark or appellation of origin of goods;
- The mark or instructions in breach of the provisions for instructions protecting industrial property rights and industrial property obligations;
- The part of products, product or process for production of products which is identical to the protected part, product or process for production namely the invention or utility solution.
- The part of products or product with the same external appearance as the protected industrial design or contains one or more parts which are components substantially constituting the protected industrial design.

Article 2 *Scope of application and objects*

1. This Decree shall specify offending acts, forms, degrees, procedures, and the powers to impose penalties for administrative offences in relation to protection and State administration of industrial property.
2. All organizations and individuals intentionally or unintentionally committing an offence against the provisions in relation to protection or State administration of industrial property, where the degree of such offence is not subject to prosecution for criminal liability, shall be subject to penalties in accordance with the *Ordinance on Dealing with Administrative Offences* and this Decree.
3. Any foreign organization or individual committing an administrative offence in relation to protection and State administration of industrial property within the territory of the Socialist Republic of Vietnam shall be subject to penalties in accordance with this Decree, except where the provisions of an international treaty to which Vietnam is a signatory or participant provide otherwise.

Article 3 *Principles for application of forms of penalty and rates of fine*

1. In respect to each administrative offence in relation to industrial property, the organization or individual committing the offence shall be subject to one of two principal penalties: a warning or a fine.

The warning shall be applicable to unintentional offences, or minor offences or first time offences where mitigating factors exist.

In the case of penalty in the form of a fine, the rate of fine shall correspond to the nature and the seriousness of the offending act. In cases where mitigating factors exist, the rate of fine may be reduced but must not be lower than the minimum fine in the scales of fine.

In cases where aggravating factors exist, the rate of fine may be increased but shall not exceed the maximum fine in the scales of fine.

2. An individual or organization committing an offence may, depending on the nature and the seriousness of the offence, be subject to one or more additional forms of penalty as follows:
 - (a) Withdrawal of the right to use a business licence or licence to provide industrial property representation services for a definite or indefinite period;
 - (b) Confiscation of the physical evidence and means used for the administrative offence.
3. In addition to the forms of penalty stipulated in clauses 1 and 2 of this article, the organization or individual committing the offence may, depending on each particular case, be subject to one or more measures as follows:
 - (a) Compulsory elimination of the element which is in breach on products, goods and means of business; compulsory correction of misleading and incorrect information causing the offence; compulsory performance of the industrial property obligations; or compulsory additions to the instructions related to industrial property;
 - (b) Compulsory destruction of articles containing the element which is in breach or low grade quality goods which are in breach and which harm the health of people;
 - (c) Compulsory payment of compensation for damage caused by the administrative offence.

The payment of compensation for damage caused by the administrative offence in relation to industrial property shall be made on the principle of agreement between the party which caused the damage and the aggrieved party. Where the value of damage caused by the administrative offence in relation to industrial property exceeds one million (1,000,000) dong, and the parties fail to reach an agreement, [the dispute] shall be dealt with in accordance with the legal proceedings for resolution of civil disputes.

The additional forms of penalty and the measures stipulated in clauses 2 and 3 of this article shall be applicable in cases where it is necessary to eradicate the offence, to eliminate the causes and conditions for a further offence and to remedy consequences caused by the administrative offences in relation to industrial property.

Article 4 *Statutory time-limits*

1. The statutory time-limit for imposing a penalty for an administrative offence in relation

to industrial property shall be one year from the date on which the offence is committed. In respect of production or trading of goods in breach of protected trademarks, appellation of origin of goods or industrial design, the statutory time-limit for imposing a penalty for an administrative offence in relation to industrial property shall be two years from the date on which the offence is committed. No penalty shall be imposed upon the organization or individual committing an offence after the expiry of this time-limit; however the measures on compulsory destruction of articles or goods which are in breach and which harm the health of people, may still be applied.

2. In respect of an individual committing an offence of the provisions in relation to industrial property who is subject to a legal action or prosecution for the offence, but called "offence of production or trading of fake goods" or a decision to hear the case in accordance with the legal proceedings for criminal offences, and after that a decision to suspend the investigation or the case is issued, the statutory time-limit for imposing an administrative penalty shall be three months from the date of issuance of the above-mentioned decision to suspend.
3. If, within the time-limits stipulated in clauses 1 and 2 of this article, an organization or individual commits a further offence in relation to industrial property, it or he shall be subject to penalties for each offence, and then the time-limit shall be calculated from the date on which the new offence is committed.

If, within the time-limits stipulated in clauses 1 and 2 of this article, an organization or individual intentionally evades or obstructs penalization, then the time-limit shall be calculated from the date on which the organization or individual no longer conducts such evasion or obstruction.

CHAPTER

Offences, Forms and Rates of Penalty

Article 5 *Offences of the provisions in relation to the procedures for establishing or exercising industrial property rights and the procedures for applying for a licence to provide industrial property representation services*

1. A warning or a fine of between two hundred thousand (200,000) dong and one million (1,000,000) dong shall be imposed on any organization or individual conducting one of the following acts:
 - (a) Performing the procedures for establishing or exercising industrial property rights for the purpose of evading or exercising acts prohibited or restricted by law in other spheres;
 - (b) Performing the procedures for establishing or exercising industrial property rights for the purpose of carrying out unfair competition, monopolizing or illegally

controlling the market, abolishing an object of industrial property, restricting or narrowing the scope of protection of industrial property rights of other persons, taking advantage of or lessening commercial goodwill of other business establishments;

- (c) Providing misleading and incorrect information or evidence in relation to the procedures for complaints regarding industrial property rights.
2. A fine of between two million (2,000,000) dong and ten million (10,000,000) dong shall be imposed on any organization or individual conducting one of the following acts:
- (a) Making any unauthorized amendment of, or falsifying, a certificate of protection or certificate relating to protection of industrial property rights, where the degree [of the offence] is not subject to prosecution for criminal liability;
 - (b) Falsifying any document or making fraudulent conduct in relation to the procedures for issuance, extension or amendment of a certificate of protection, request for approval or registration of a contract for transfer of industrial property rights or application for compulsory licensing, where the degree [of the offence] is not subject to prosecution for criminal liability;
 - (c) Falsifying documents or making fraudulent conduct in relation to the procedures for issuance or extension of a certificate of industrial property representation service organization or a card of industrial property representation person, where the degree [of the offence] is not subject to prosecution for criminal liability.
3. Additional forms of penalty shall be the following:
- (a) Withdrawing the right to use a business licence for a period of between one month and three months in respect of the acts stipulated in clause 1 of this article; or a period of between three months and six months in respect of the acts stipulated in clause 2 of this article;
 - (b) Confiscating papers, documents, certificates of protection or certificates in relation to protection of industrial property rights which have been amended without an authorization or falsified in respect of the acts stipulated in clause 2 of this article;
 - (c) Withdrawing the certificate of protection or certificate which has been issued to an organization or individual conducting any act stipulated in sub-clauses (a) and (b) of clause 1 of this article.

Article 6 *Offences of the provisions in relation to instructions related to protection of industrial property rights*

1. A warning or a fine of between five hundred thousand (500,000) dong and two million (2,000,000) dong shall be imposed on any organization or individual conducting one of the following acts:
 - (a) Providing misleading instructions (including instructions in the form of signs) related to the owner of industrial property;
 - (b) Providing misleading instructions (including instruction in the form of signs) related to products or services containing an element whose industrial property rights are protected;
 - (c) Failing to use trademarks, appellation of origin of goods or industrial design in accordance with the registered sample, but providing instructions that such trademarks, appellation of origin of goods or industrial design have been registered for protection of industrial property rights;
 - (d) Providing misleading instructions related to products manufactured or services provided under licence;
 - (e) Providing misleading instructions related to the author of an invention, utility solution or industrial design.

2. A warning or a fine of between one million (1,000,000) dong and five million (5,000,000) dong shall be imposed on any organization or individual conducting one of the following acts:
 - (a) Failing to provide instructions related to manufacture of products or provision of services under licence in respect of products manufactured or services provided under the licence.
 - (b) Failing to state or failing to state clearly and fully the following words: "Made in Vietnam" in respect to products manufactured in Vietnam under foreign licence; or products manufactured in Vietnam and bearing trademarks which cause misunderstanding that such goods are foreign goods or originated from a foreign country.

3. Additional forms of penalty:
 - (a) Withdrawing the right to use a business licence for a period of between one month and three months in respect of the acts stipulated in clauses 1 and 2 of this article;
 - (b) Confiscating the physical evidence and means used for administrative offences in respect of the acts stipulated in clauses 1 and 2 of this article.

4. In addition to the forms of penalty stipulated in clauses 1, 2 and 3 of this article, the organization or individual committing the offence may be subject to one or more measures as follows:
 - (a) Being compelled to eliminate an element which is in breach on products, goods or means of business in respect of the acts stipulated in clause 1 of this article;
 - (b) Being compelled to make additions to the instructions in respect of the acts stipulated in clause 2 of this article.

Article 7 *Offences of the provisions in relation to consultancy services and industrial property representation*

1. A warning or a fine of between five hundred (500,000) dong and two million (2,000,000) dong shall be imposed on any industrial property representation service organization or an industrial property representation person conducting one of the following acts:
 - (a) Intentionally giving misleading advice or notice related to the provisions of the laws in relation to industrial property rights, or misleading information on industrial property activities causing damage to the person who has legal industrial property rights;
 - (b) Obstructing the normal process of establishment and exercise of industrial property rights causing damage to the person who has legal industrial property rights;
 - (c) Giving misleading advice or instructions causing confusion or misunderstanding in relation to the functions, scope of powers and responsibilities of the industrial property representation service organization or industrial property representation person;
 - (d) Failing to charge clients fees or other amounts payable to the State, or service fees in relation to the procedures for establishment and protection of industrial property rights, in accordance with the regulations;
 - (e) Deceiving or forcing clients to enter into contracts for industrial property representation services, where the degree [of the offence] is not subject to prosecution for criminal liability;
 - (g) Undertaking simultaneous representation of parties to a dispute regarding industrial property rights causing damage to the person who has legal industrial property rights;
 - (h) Lending or using a card for improper works or using a licence or card which no longer has effect;

- (i) Failing to provide information at the request of the authorized State body or providing misleading and incorrect information on issues relating to industrial property representation services.
- 2. A warning or fine of between one million (1,000,000) dong and five million (5,000,000) dong shall be imposed on any organization or individual providing consultancy services or industrial property representation services for establishment and exercise of industrial property rights without obtaining a proper licence to provide industrial property representation services.
- 3. A fine of between two million (2,000,000) dong and five million (5,000,000) dong shall be imposed on any organization or individual making unauthorized amendments of, or falsifying, a certificate of industrial property representation service organization or a card of industrial property representation person, where the degree [of the offence] is not subject to prosecution for criminal property.
- 4. A fine of between five million (5,000,000) dong and twenty million (20,000,000) dong shall be imposed on any industrial property representation service organization or industrial property representation person conducting one of the following acts:
 - (a) Carrying out works relating to industrial property activities which fall outside the authorized functions, duties and powers;
 - (b) Assuming a false name of a State administrative body or on officer of the body in charge of State administration of industrial property for the purpose of providing industrial property representation services, where the degree [of the offence] is not subject to prosecution for criminal liability.
- 5. Additional forms of penalty
 - (a) Withdrawing the right to use a business licence for a period of between one month and three months in respect of the acts stipulated in clause 2 of this article;
 - (b) Withdrawing the right to use a licence to provide industrial property representation services for a period of between one month and three months in respect of the acts stipulated in clause 1 of this article; or a period of between three month and six months in respect of the acts stipulated in clause 3 of this article;
 - (c) Withdrawing the right to use a licence to provide industrial property representation services for a period of between six months and one year or an indefinite period in respect of the acts stipulated in clause 4 of this article;
 - (d) Confiscating false papers in respect of the acts stipulated in clause 3 of this article.

6. In addition to the forms of penalty stipulated in clauses 1, 2, 3, 4 and 5 of this article, the organization or individual committing the offence may be subject to one or more measures as follows:
 - (a) Being compelled to correct misleading and incorrect information in respect of the acts stipulated in sub-clauses (a) and (c) of clause 1 of this article;
 - (b) Being compelled to pay compensation for damage caused by an administrative offence in respect of the acts stipulated in clauses 1, 2 and 3 of this article.

Article 8 *Offences of the provisions in relation to industrial property obligations*

1. A warning or a fine of between one million (1,000,000) dong and five million (5,000,000) dong shall be imposed on any organization or individual conducting one of the following acts:
 - (a) Failing to perform the obligation to make a contract or to register a contract for transfer of industrial property rights in accordance with the form, substance and procedures as stipulated in the laws in relation to industrial property;
 - (b) Failing to perform the obligation to register trademarks in respect of products or services in industries where the registration of trademarks is compulsory.
2. A fine of between two million (2,000,000) dong and ten million (10,000,000) dong shall be imposed on any organization or individual using as the trademark, signs which cause misunderstanding or confusion or are used for the purpose of deceiving consumers in relation to origin, ability, functions, quality or value of goods or services.
3. A warning or a fine of between five hundred thousand (500,000) dong and two million (2,000,000) dong shall be imposed on any organization or individual failing to perform the obligation to pay remuneration to an owner of an invention, utility solution or industrial design in accordance with the decision of the State body authorized in compulsory licencing.
4. Additional forms of penalty:
 - (a) Withdrawing the right to use a business licence for a period of between one month and three months in respect of the acts stipulated in clause 1; for a period of between three months and one year or an indefinite period in respect of the acts stipulated in clause 2 of this article;
 - (b) Confiscating the physical evidence and means used for administrative offences in respect of the acts stipulated in sub-clause (b) of clause 1 and clause 2 of this article.

5. In addition to the forms of penalty stipulated in clauses 1, 2, 3 and 4 of this article, any organization or individual committing an offence may be subject to one or more measures as follows:
 - (a) Being compelled to perform obligations relating to industrial property in respect of the acts stipulated in sub-clauses (a) and (b) of clause 1 and clause 3 of this article; being compelled to eliminate an element(s) which are in breach, on goods and means of business in respect of the acts stipulated in clause 2 of this article;
 - (b) Being compelled to pay compensation for damage caused by an administrative offence in respect of the acts stipulated in clauses 1, 2 and 3 of this article.

Article 9 *Offences of the provisions in relation to protection of industrial property rights*

1. A warning or a fine of between five million (5,000,000) dong and twenty million (20,000,000) dong shall be imposed on any organization which, or individual who, is not an owner of industrial property or the prior person entitled to use (in the case of an invention, utility solution or industrial design), conducting one of the following acts for business purposes without obtaining a permission from the owner of industrial property or the licence to use (in the case of compulsory licencing) issued by the Ministry of Science, Technology and Environment:
 - (a) Producing (namely manufacturing, assembling, processing and packing) protected products or parts of products which are an invention, utility solution or industrial design;
 - (b) Applying a protected process which are an invention or utility solution;
 - (c) Exploiting protected products or part of products which are an invention or utility solution;
 - (d) Circulating (namely selling and transporting), advertising (by mass media, advertising signs, means of business, other products or goods, means of services, offers, promotion, correspondence used for business purposes) in order to sell or to offer or store to sell protected products or parts of products which are an invention or utility solution or which are produced in accordance with a protected process which is an invention or utility solution;
 - (e) Importing or exporting products or parts of products which are an invention or utility solution or which are produced in accordance with a protected process which is an invention or utility solution;
 - (g) Circulating (namely selling and transporting), advertising (by mass media, advertising signs, means of business, other products or goods, means of services, offers, promotion, correspondence used for business purposes) in order to sell or to offer or store to sell the following products:

- Products or parts of products with the protected external appearance which is an industrial design or contains one or more parts which are components substantially constituting the protected industrial design;
 - Products or parts of products bearing a sign or with a package bearing identical or similar signs which causes confusion with the protected trademark or appellation of goods of the same or similar type, including cases where the appellation of products is translated into other languages or used with such words as "sort of", "type of", "adapted from" or similar words;
- (h) Importing or exporting types of products set out in sub-clause (g) of this clause;
- (i) Attaching (in all forms such as printing, sticking, attaching, moulding, embossing and so forth) identical or similar signs to products or packaging of products causing confusion with the protected trademark or appellation of goods of the same or similar type;
- (k) Providing services under the name or logo or attaching identical or similar signs to means of services causing confusion with the protected trademark of the services of the same or similar type.
2. A fine of between twenty million (20,000,000) dong and fifty million (50,000,000) dong shall be imposed on any organization or individual conducting any act set out in clause 1 of this article where a further offence is committed, and a fine of between fifty million (50,000,000) dong and one hundred million (100,000,000) dong shall be applicable in the case of a large scale or organized offence where the degree [of the offence] is not subject to prosecution for criminal liability.
3. A fine of between two million (2,000,000) dong and ten million (10,000,000) dong shall be imposed on any organization or individual carrying out one of the following acts: manufacturing, trading, transporting, storing for trading, importing or exporting stickers, labels, samples of trademarks or packaging of products bearing identical or similar signs causing confusion with the protected trademarks, appellation of origin of goods or industrial design.
4. Additional forms of penalty:
- (a) Withdrawing the right to use a business licence for a period of between one month and six months in respect of the acts stipulated in clauses 1 and 3; for a period of between six months and one year or an indefinite period in respect of the acts stipulated in clause 2 of this article;
- (b) Confiscating the physical evidence and means used for administrative offences in respect of the acts stipulated in clauses 1, 2 and 3 of this article.

5. In addition to the forms of penalty stipulated in clauses 1, 2, 3 and 4 of this article, the organization or individual committing the offence may be subject to one or more measures as follows:
- (a) Being compelled to eliminate an element which is in breach on products, goods or means of business in respect of the acts stipulated in clauses 1 and 2 of this article;
 - (b) Being compelled to pay compensation for damage caused by an administrative offence in respect of the acts stipulated in clauses 1 and 2 of this article;
 - (c) Being compelled to destroy articles containing the element which is in breach in respect of the acts stipulated in clause 3 of this article; being compelled to destroy low grade quality goods which are in breach and which harm the health of people in respect of the acts stipulated in clauses 1 and 2 of this article.

CHAPTER III

Powers and Procedures for Imposing Penalties for Offences

Article 10 *Powers of people's committees at all levels to impose penalties*

People's committees at all levels shall have the power to impose penalties for administrative offences in relation to industrial property occurring in the localities within their authority in accordance with article 6, 7, 8 and 9 of this Decree. The powers of people's committees of all levels shall be as follows:

1. Chairmen of people's committees of districts, townships and provincial cities shall have the powers to:
- (a) Issue a warning;
 - (b) Impose a fine of up to ten million (10,000,000) dong;
 - (c) Confiscate the physical evidence and means used for administrative offences with a value of up to one hundred million (100,000,000) dong;
 - (d) Withdraw the right to use a business licence issued by the [authority] of the district level for an indefinite or definite period;
 - (e) Compel [offenders] to eliminate an element which is in breach on products, goods or means of business, or to correct misleading and incorrect information causing offences;

- (g) Compel [offenders] to pay compensation for damage caused by an offence;
 - (h) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.
1. Chairmen of people's committees of provinces and cities under central authority shall have the powers to:
- (a) Issue a warning;
 - (b) Impose a fine of up to one hundred million (100,000,000) dong;
 - (c) Confiscate the physical evidence and means used for administrative offences;
 - (d) Withdraw the right to use a business licence issued by the [authority] of the district or provincial level for an indefinite or definite period;
 - (e) Compel [offenders] to eliminate an element which is in breach on products, goods or means of business, or to correct misleading and incorrect information causing offences;
 - (g) Compel [offenders] to pay compensation for damage caused by an offence;
 - (h) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.

Article 11 *Powers of inspectors specializing in industrial property*

Inspectors of the Ministry of Science, Technology and Environment specializing in industrial property shall have the power to impose administrative penalties for offences occurring within the country. Inspectors of the Department of Science, Technology and Environment specializing in industrial property shall have the power to impose administrative penalties for offences occurring in the localities within their authority. The powers of inspectors specializing in industrial property to impose penalties shall be as follows:

1. Any inspector specializing in industrial property in the course of carrying out his delegated duties, shall have the power to:
- (a) Issue a warning;
 - (b) Impose a fine of up to two hundred thousand (200,000) dong;
 - (c) Confiscate the physical evidence and means used for administrative offences with

a value of up to five hundred thousand (500,000) dong;

- (d) Compel [offenders] to eliminate an element which is in breach on products, goods or means of business, or to correct misleading and incorrect information causing offences;
 - (e) Compel [offenders] to pay compensation for damage caused by an offence;
 - (g) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.
2. Any chief inspector of the Department of Science, Technology and Environment specializing in industrial property shall have the power to:
- (a) Issue a warning;
 - (b) Impose a fine of up to ten million (10,000,000) dong;
 - (c) Confiscate the physical evidence and means used for administrative offences with a value of up to one hundred million (100,000,000) dong;
 - (d) Compel [offenders] to eliminate an element which is in breach on products, goods or means of business, or to correct misleading and incorrect information causing offences;
 - (e) Compel [offenders] to pay compensation for damage caused by an offence;
 - (g) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.
 - (h) Request the Director of the Department of Industrial Property to withdraw the right to use the licence to provide industrial property representation services.
2. The Chief Inspector of the Ministry of Science, Technology and Environment specializing in industrial property shall have the power to:
- (a) Issue a warning;
 - (b) Impose a fine of up to twenty million (20,000,000) dong;
 - (c) Withdraw the right to use a licence to provide industrial property representation services for an indefinite or definite period;
 - (d) Confiscate the physical evidence and means used for administrative offences;

- (e) Compel [offenders] to eliminate an element which is in breach, on products, goods or means of business, or to correct misleading and incorrect information causing offences;
- (g) Compel [offenders] to pay compensation for damage caused by an administrative offence;
- (h) Compel [offenders] to destroy articles containing the element which is in breach, or low grade quality goods which are in breach and which harm the health of people.

Article 12 *Powers of police offices, customs offices and market control bodies*

Heads of police offices at the district level, directors of economic police divisions, directors of provincial police departments, the Director of the Economic Police Department, heads of customs control teams at border gates, directors of provincial customs departments, heads of market control bodies and directors of market control departments shall, depending on their authority, have the power to apply administrative penalties and other measures for offences of the provisions in relation to protection of industrial property rights stipulated in clauses 1, 3, 4 and 5 of article 9 of this Decree and articles 29, 30 and 33 of the *Ordinance on Dealing with Administrative Offences*.

Article 13 *Responsibilities of State administrative bodies specializing in industrial property for dealing with administrative offences*

The Department of Industrial Property shall assume State administration of industrial property in accordance with law and shall be responsible for co-ordinating with other central and local bodies authorized to deal with administrative offences in relation to industrial property at the request of these bodies.

Article 14 *Procedures for imposing penalties*

1. Upon identifying any offending act or sign of an administrative offence in relation to industrial property, the person authorized to impose the penalty must issue an order to immediately suspend the offending act, and must clearly inform the organization or individual concerned of the provisions on dealing with administrative offences in relation to industrial property as well as the relevant laws in relation to industrial property, and require such organization or individual to comply with the laws in relation to industrial property.
2. Where the person authorized to impose the penalty determines clearly that the offending act is subject to a warning, [he/she] must decide and issue the verbal or written warning on the spot where the offence is committed.

Where the person authorized to impose the penalty considers that the offending act may be subject to a fine, [he/she] must prepare a record of the administrative offence in

accordance with article 47 of the *Ordinance on Dealing with Administrative Offences*.

3. If upon preparation of the minute of the offence, the person authorized to impose the penalty considers that dealing with the offence needs the evaluation or conclusion of the body specializing in industrial property, [he/she] shall send the file, evidence of the offence and a request for opinion to the central or local State administrative body in charge of industrial property as stipulated in article 13 of this Decree for the purpose of seeking the opinion or conclusion in respect to the offence and the forms [of penalty] and measures to be taken in respect of the offending act.

The State administrative body in charge of industrial property shall, within fifteen (15) days from the date of receipt of the written request, the file and evidence of the offence, notify in writing the person authorized to impose the penalty of its opinion.

4. The person authorized to impose the penalty shall, within the time-limit of fifteen (15) day from the date of preparation of the record, issue a penalty decision in respect of the offending act. In the case of serious offences or complicated offences, the above-mentioned time-limit may be extended but shall not exceed thirty (30) days. The penalty decision and the contents of the penalty decision must comply with article 48 of the *Ordinance on Dealing with Administrative Offences*.

The date on which the penalty decision becomes effective shall be the date of its signing or other date stated in the penalty decision, but not later than fifteen (15) days from the date of signing of the penalty decision.

The penalty decision shall be sent to the penalized organization or individual within a time-limit of three days from the date of its signing and at the same time shall be sent to the Department of Industrial Property for the purpose of co-ordinating to monitor and to perform the procedures for establishment, amendment, suspension or cancellation of a certificate of protection, certificate or relevant licence.

Article 15 *Procedures for imposing fines*

A fine shall be imposed in accordance with the following provisions:

1. The rate of fine, time-limit and location of payment of the fine shall be clearly stated in the penalty decision;
2. The fined organization or individual must pay the fine within the time-limit and at the location stated in the penalty decision and shall receive a fine receipt; upon collection of fines, only the receipt forms issued by the Ministry of Finance shall be used;
3. The person imposing fines shall be prohibited from collecting fines on the spot;
4. Any collected fine shall be paid to the State Budget through an account opened at the State Treasury;

5. Any decision to issue a fine of more than two million (2,000,000) Dong must be sent to the People's Inspectorate of the same level.

Article 16 *Procedures for withdrawing the right to use a licence*

1. The procedures for withdrawing the right to use a business licence or licence to provide industrial property representation services must comply with article 50 of the *Ordinance on Dealing with Administrative Offences*.

The person authorized to impose the penalty shall apply the form of withdrawing the right to use a licence in cases where an organization or individual committing an offence intentionally fails to suspend the offending act or is likely to continue to commit a further offence upon issuance of a decision to suspend the offence. The person authorized to impose the penalty and issue a decision to withdraw the right to use a licence shall clearly state the name, type, licence number and the period of withdrawal of the right to use the licence in the penalty decision, and at the same time shall immediately notify the body issuing the licence in writing of the reasons and the period of withdrawal of the right to use the licence.

Where the person authorized to impose the penalty considers that the type of licence or the period of withdrawal of the right to use falls outside his/her powers to decide, [he/she] shall issue a decision to suspend the offending act and request the superior body authorized to impose the penalty or the body which issued such licence to issue a decision to revoke the right to use or the licence.

2. The person authorized to impose the penalty shall decide to withdraw the right to use a licence for a definite period in the case where [he/she] considers the organization or individual committing the offence may take remedies to overcome or to limit the consequences of the offence, or [the offender may] cease the offence and eliminate all causes and conditions for a further offence upon a certain period of suspension of production, business or provision of services.

The applicable period of withdrawal of the right to use a licence must fall within the stipulated period applicable to the relevant offending act and correspond to the necessary period for the organization or individual committing the offence to rectify or limit the consequences of the offence, to perform all the requirements stipulated in the penalty decision, and to eliminate all causes and conditions for a further offence. Upon expiry of the period stated in the penalty decision, the authorized person who issued the decision to withdraw the right to use a licence, must return the licence to the licensed organization or individual.

3. The person authorized to impose the penalty shall decide to withdraw the right to use a licence for an indefinite period, or request the body which issued such licence to revoke the licence, in the cases of organized or large scale offences or recidivism.

Where the person authorized to impose the penalty identifies that a licence has been granted by a person lacking authority, or the contents of the licence are contrary to the laws, he/she must immediately withdraw the licence and at same time notify in a timely manner the body which issued the licence or body authorized to issue and control such licence and the authorized State inspection body.

Article 17 *Procedures for temporarily retaining the physical evidence and means used for administrative offences*

1. Powers and procedures for taking measures to temporarily retain the physical evidence and means used for administrative offences shall be as stipulated in article 41 of the *Ordinance on Dealing with Administrative Offences*.
2. The measure of temporarily retaining the physical evidence and means used for administrative offences, is taken in order to immediately prevent an offending act or to protect evidence necessary for the purpose of verifying details which shall be used as a basis for a decision to deal with the offence.
3. If upon expiry of the period of temporary retention of the physical evidence and means used for administrative offences, the person authorized to impose the penalty considers that the measure of confiscating the physical evidence and means used for administrative offences should be taken, the authorized person who issued the decision to temporarily retain the physical evidence and means used for administrative offences shall issue a decision, or request the body authorized to impose the penalty of issuing a decision, to confiscate the physical evidence and means used for administrative offences in accordance with article 51 of the *Ordinance on Dealing with Administrative Offences* and article 18 of this Decree.

Article 18 *Procedures for confiscating the physical evidence and means used for administrative offences*

1. The procedures for confiscating the physical evidence and means used for administrative offences in relation to industrial property shall comply with article 51 of the *Ordinance on Dealing with Administrative Offences*.
2. The measure of confiscating the physical evidence and means used for administrative offences in relation to industrial property, shall be taken in the following cases:
 - (a) Confiscation and sealing of such goods and means are necessary for obtaining the evidence or ensuring that evidence shall not be destroyed, abolished or the existing status of the evidence changed.
 - (b) Such goods, papers, documents or means are likely to be used for a further offence;
 - (c) The organization or individual committing an offence has insufficient capability

and conditions for eliminating an element which is in breach on goods, or intentionally fails to perform the requirements [imposed by] the person authorized to impose the penalty to eliminate of the element which is in breach, to amend or add signs or instructions on goods and means of business;

- (d) Goods in the market or imported or exported goods contain elements which are in breach even though the origin, owner, producer or person marketing such goods is unidentified, but there are sufficient bases for determining that such goods are not manufactured or marketed by the owner of the relevant object of industrial property.
- (e) Means which are in breach, are those means whose substantial function is to manufacture goods, or provision of services, which are in breach.

Article 19 *Procedures for dealing with the confiscated physical evidence and means used for administrative offences*

The procedures for dealing with the confiscated physical evidence and means used for administrative offences in relation to industrial property shall comply with article 52 of the *Ordinance on Dealing with Administrative Offences* and shall be as follows:

1. The measure of destructing evidence and the means used for offences shall be applied in the following cases:
 - (a) Low grade quality goods which are in breach and which harm the life or health of people and the living environment;
 - (b) Goods or articles which are in breach, and which have no usable value;
 - (c) Goods or articles which are in breach and which are stickers, labels of products, samples of trademarks or packaging of products or goods;
 - (d) Goods or means used for offences and which have usable value but cannot be dealt with by the measures stipulated in clause 2 of this article.
2. The physical evidence being goods or means of production, business or services and which have usable value, shall be dealt with by the following measures:
 - (a) Eliminating an element which is in breach on goods or means of production, business or services and auctioning [such goods or means], provided that purchasers must take measures to exploit or use reasonably [such goods or means] and ensure they shall not cause any further offending act and not affect the legal rights and interests of the owner of the relevant object of industrial property. In respect of means whose substantial function is to manufacture goods or articles or to provide services, which are in breach, the auction shall not be permitted to be conducted unless purchasers can convert such function or

guarantee they can use other functions, or make (other) use of such means as raw materials;

- (b) Auctioning goods, provided that purchasers shall be issued with a proper licence by the owner of industrial property; and the goods satisfy all quality standards and the purchasers must make additions to instructions as stipulated;
- (c) Where it is impossible to eliminate an element which is in breach, or to satisfy all conditions for auction in accordance with sub-clauses (a) and (b) of this clause, [such goods] may be distributed to users to use for non-commercial purposes (such as humanitarian purposes, social welfare, studies or education), provided that the exploitation or use of such products shall not affect the legal rights and interests of the owner of the relevant object of industrial property.

Article 20 *Enforcement of penalty decisions*

1. Where an organization or individual subject to [a penalty decision] fails to voluntarily comply with the penalty decision within five days from the date of receipt of the penalty decision, the person authorized to impose the penalty shall issue a decision to enforce the penalty decision.
2. Performance of penalty decisions, enforcement of penalty decisions and the time-limit for performance of penalty decisions shall be as stipulated in articles 54, 55 and 56 of the *Ordinance on Dealing with Administrative Offences*.

CHAPTER IV

Settlement of Complaints and Denunciations and Dealing with Breaches

Article 21 *Complaints and denunciations regarding offending acts in relation to imposition of penalties for offences*

1. Any person authorized to impose penalties for administrative offences in relation to industrial property who contravenes the provisions on administrative penalties, extorts, ignores an offence, protects an offender, or fails to impose a penalty or to impose a penalty in accordance with his or her powers shall, depending on the nature and seriousness of the offence, be subject to a disciplinary action or prosecution for criminal liability. Where the offence causes damage to the State, organizations or citizens, the person responsible must pay compensation for damage in accordance with law.
2. The procedures for lodging and settling complaints and denunciations of individuals and organizations subject to penalties for administrative offences in relation to industrial property shall be as stipulated in chapter VIII of the *Ordinance on Dealing with Administrative Offences* and the *Ordinance on Procedures for Resolution of Administrative Disputes*. The procedures for dealing with offences of persons authorized to impose penalties for administrative offences and persons subject to penalties for

administrative offences in relation to industrial property shall be as stipulated in chapter IX of the *Ordinance on Dealing with Administrative Offences*.

CHAPTER V

Implementing Provisions

Article 22

This Decree shall be of full force and effect after fifteen (15) days from the date of its signing. All provisions of sub-clause (a) of clause 1 and sub-clause (a) of clause 3 of article 15 of Decree no.57-CP dated 31 May 1997 on penalties for administrative offences in relation to measurement and quality of goods shall be replaced with the provisions on penalties for production or trading of goods whose trademarks are identical or similar to the trademarks of other establishments as stipulated in this Decree.

Article 23

The Minister of Science, Technology and Environment, the Minister of Trade, the Ministry of Interior, the Minister of Finance and the General Director of the General Department of Customs shall, depending on their responsibility for administration, be responsible for providing guidelines and inspecting the implementation of this Decree.

Article 24

Heads of ministries, ministerial equivalent bodies and Government bodies and chairmen of people's committees of provinces and cities under central authority shall be responsible for the implementation of this Decree.

**On behalf of the Government
Prime Minister**

PHAN VAN KHAI